

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DONALD RICHARD CHILDS II,

Plaintiff(s),

v.

WYNN LAS VEGAS, LLC,

Defendant(s).

Case No. 2:15-CV-1342 JCM (GWF)

ORDER

Presently before the court is Wynn Las Vegas, LLC d/b/a Wynn Las Vegas' motion to dismiss. (Doc. # 4). *Pro se* plaintiff filed a response (doc. # 9), and defendant filed a reply. (Doc. # 12).

Also before the court is plaintiff's motion to amend the complaint. (Doc. # 10). Defendant filed a response (doc. # 13), and plaintiff filed a reply. (Doc. # 14).

Plaintiff filed his motion to amend, which includes a proposed amended complaint, seven days after defendant filed its motion to dismiss. Under FRCP 15(a)(1)(B), plaintiff may amend his pleading once as a matter of course within twenty-one days after service of defendant's motion under FRCP 12(b). Plaintiff did not, therefore, need to file a motion at all, but could have simply docketed an amended complaint. Accordingly, the motion will be granted and the clerk is instructed to docket the amended complaint accordingly.

An amended complaint supersedes the original pleading, making it "non-existent." *Valadez-Lopez v. Chertoff*, 656 F.3d 851,857 (9th Cir. 2011). If a litigant files an amended pleading, then motions to dismiss the original complaint are mooted without prejudice. *Johnson v. Cheryl*, 2013 WL 3943606, at \*2 (D. Nev. 2013). Accordingly, defendant's motion to dismiss will be denied as moot, without prejudice.

1 The court has previously stayed discovery in this matter pending resolution of the now  
2 moot motion to dismiss. (Doc. # 24). That stay shall remain in effect subject to further action by  
3 the court.

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff Donald Richard  
6 Childs II's motion to amend the complaint (doc. # 10) be, and the same hereby is, GRANTED,  
7 consistent with the foregoing.

8 IT IS FURTHER ORDERED THAT defendant Wynn Las Vegas, LLC d/b/a Wynn Las  
9 Vegas' motion to dismiss (doc. # 4) be, and the same hereby is, DENIED as moot, without  
10 prejudice.

11 The clerk is instructed to docket plaintiff's amended complaint (doc. # 10, 5-13)  
12 accordingly.

13 DATED March 25, 2016.

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UNITED STATES DISTRICT JUDGE